rules permitting hearsay and other evidence which it deems reasonably probative and relevant.

A greater liberality has characterized the attitude of the courts on questions of exclusion of competent and admission of incompetent evidence.[16] But there still is a rigid adherence to common law requirements of confrontation and opportunity for cross-examination. This is illustrated by a recent English decision [17] where an award by an arbitrator based on *ex parte* hearings was reversed in spite of the fact that neither party had objected to this mode of procedure. Some American courts have even held *ex parte* hearings a violation of due process of law.[18] In this imposition on administrative tribunals of the common law rules of evidence, we have another instance of the administration of justice by the courts with reference to a picture of the legal order formed for an institution of the past, and applied to the modern workings of a fundamentally different tribunal.

DESCENT OF FOREIGN LANDS TO CHILD LEGITIMATED BY ADOPTION. — The California Civil Code[1] enacts that if the father acknowledges a child born out of wedlock and receives it into his family, he adopts the child, which then is deemed legitimate from birth for all purposes. The question, whether a child "adopted" in this manner could inherit lands of the parent situate in Illinois, was recently answered in the affirmative by the Supreme Court of that state.[2] The conflicting results of the few cases in which a similar problem has been in issue prompt an examination of the approach taken by this court. Conceivably, the child might have inherited either as a legitimated natural child, or as an adopted child. That there is more than a mere verbal difference between these two capacities with respect to descent may be seen by comparing the relevant statutory provisions in Illinois.[3]

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[16] Frankfort General Ins. Co. *v.* Pillsbury, 173 Cal. 56, 159 Pac. 150 (1916); Mesmer & Rice *v.* Industrial Accident Comm., 178 Cal. 466, 173 Pac. 1099 (1918).

[17] W. Ramsden & Co. *v.* Jacobs, [1922] 1 K. B. 640. For the facts of this case see RECENT CASES, *infra*, p. 102. It may well be that the case rightly holds *ex parte* hearings improper in view of Order XXXVI, Rule 49, SUPREME COURT OF JUDICATURE RULES. But the court should not have reversed this award where no objection was seasonably made to the procedure employed by the arbitrator.

[18] Carstens *v.* Pillsbury, 172 Cal. 572, 158 Pac. 218 (1916); Bereda Mfg. Co. *v.* Industrial Board of Ill., 275 Ill. 514, 114 N. E. 275 (1916), followed in Ruda *v.* Industrial Board of Ill., 283 Ill. 550, 119 N. E. 579 (1918); Gauthier's Case, 120 Me. 73, 113 Atl. 28 (1921).

[1] See § 230. ADOPTION OF ILLEGITIMATE CHILD. — "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth."

[2] McNamara *et al. v.* McNamara, 135 N. E. 410 (Ill., 1922). For the facts of this case see RECENT CASES, *infra* p. 104.

[3] See 1921 CAHILL'S ILL. REV. STAT., c. 39, § 3: "An illegitimate child, whose parents have inter-married, and whose father has acknowledged him or her as his child, shall be considered legitimate." c. 4, § 5: "A child so adopted shall be deemed for the purpose of inheritance . . . the child of the parents

What are the rights of the person whose legitimacy has been established subsequent to birth, when he claims as heir his father's lands in another state? According to the weight of American authority, his legitimate status as fixed by the proper law will be recognized with all the rights incident thereto under the law of the *situs* including the right to succeed to land.[4] Status is said to be determined by the law of the person's domicil.[5] This rule is applied without difficulty to a case of legitimation where parent and child have the same domicil.[6] The legitimate status being double, in the sense that any change in the status of the child involves a correlative change in the status of the parent, what law will govern legitimation if the parties have independent domicils? It would seem that the domiciliary law of either party could establish the child's legitimacy for certain purposes only.[7] If, however, as in the principal case, the law of the father's domicil purports to legitimate from birth, it may do so.[8] To be compared with the prevailing American view are the decisions which follow the English case of *Birtwhistle* v. *Vardill* [9] in denying the right of a child born out of wedlock to take land by descent, although he may be legitimate according to his domiciliary law.[10] These authorities must be taken to concede that a person legitimate according to the law of his domicil is legitimate everywhere.[11] They must be explained on the ground that the common law, affirmed by the so-called Statute of Merton,[12] requires that the

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by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to the body or bodies of the parents by adoption, nor property from the lineal or collateral kindred of such parents by right of representation." For a construction of the Illinois statute of adoption see Keegan *v.* Geraghty, 101 Ill. 26 (1881).

[4] Scott *v.* Key, 11 La. Ann. 232 (1856); Miller *v.* Miller, 91 N. Y. 315 (1883); Dayton *v.* Adkisson, 45 N. J. Eq. 603, 17 Atl. 964 (1889); Bates *v.* Virolet, 33 App. Div. 436, 53 N. Y. Supp. 893 (1898). See Ross *v.* Ross, 129 Mass. 243 (1880). See WHARTON, CONFLICT OF LAWS, 3 ed., § 250a, at 552.

[5] See STORY, CONFLICT OF LAWS, 8 ed. §§ 51, 51a, 93. *Cf.* DICEY, CONFLICT OF LAWS, 3 ed., 505–510.

[6] As in Scott *v.* Key, *supra.*

[7] The law of the child's domicil might fix his status as a legitimate child, for purposes not involving the correlative status of the parent. Upon him, *invitum*, that law cannot impose a new status to his detriment. Irving *v.* Ford, 183 Mass. 448, 67 N. E. 366 (1903). Perhaps the parent might avail himself of the status so imposed to secure a benefit through the child. See WHARTON, *op. cit.*, § 250a, at 556; MINOR, CONFLICT OF LAWS, § 100.

[8] Blythe *v.* Ayres, 96 Cal. 532, 31 Pac. 915 (1892). The case is similar to one where a child is legitimated from birth by the subsequent marriage of its parents. *Cf.* Munro *v.* Munro, 7 Cl. & Fin. 842 (1840).

[9] 7 Cl. & Fin. 895 (1840). For a criticism of this case see STORY, *op., cit.* § 93, *n* to *s*. The case is exhaustively discussed and the authorities are reviewed at length in the opinion of Mr. Chief Justice Gray, Ross *v.* Ross, *supra,* at 251–258.

[10] Lingen *v.* Lingen, 45 Ala. 410 (1871); Williams *v.* Kimball, 35 Fla. 49, 16 So. 783 (1895) (overruled on another point in Adams *v.* Sneed, 41 Fla. 151, 25 So. 893 (1899)); Smith *v.* Derr's Administrators, 34 Pa. St. 126 (1859).

[11] See DICEY, *op cit.*, 851.

[12] 20 Hen. III, c. 9 (1235). This statute consists of an entry on the minutes of Parliament of the refusal of that body to accede to the request of the bishops, that the common law be changed to conform to the canon law in

heir to his father's land not only be legitimate, but that he be born in lawful wedlock.[13] It seems that these latter cases do not represent the law of Illinois.[14] However, the court avoided this question, deciding the case on a theory of adoption.

It may be stated as a general rule that the relationship of adoption, established by the domiciliary law, will be recognized by the law of the *situs* in determining the heirship to land.[15] A qualification is made, however, that the relationship must not be inconsistent with the policy of the latter law.[16] Since adoption involves an alteration in the status of the person adopted, of the natural parents, and of the adopting parents — all of whom conceivably might have different domicils — it may be difficult to say what law governs.[17] The meagre authorities do not solve this problem satisfactorily,[18] but the answer would seem ultimately to depend upon the principles governing the parallel case of legitimation. In the principal case all the parties were domiciled in California. Its law, therefore, fixed the adopted status of the child.[19] Illinois then recognized the child

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permitting the legitimation of bastards by the subsequent marriage of their parents.

[13] See 6 HARV. L. REV. 379.

[14] In Lewis *v.* King, 180 Ill. 259, 54 N. E. 330 (1899), two slaves had been formally married, and after their emancipation had complied with a Kentucky statute purporting to validate slave marriages and to legitimate the offspring thereof. It was held that a child born during its parents' slavery could inherit lands in Illinois. There seems to have been some doubt whether the child was not legitimate from birth, but the case was decided on the ground that the child, legitimated under the law of Kentucky, could take the lands by descent. This seems to have been assumed in McDeed *v.* McDeed, 67 Ill. 545. In 1921 CAHILL'S ILL. REV. STAT., c. 28, § 1, it is provided that the common law and common law statutes, so far as applicable and of a general nature, form the rule of decision and shall be in force until repealed by the legislature. Legitimation by subsequent marriage is allowed by c. 17, § 15, by subsequent marriage and acknowledgment of the child by c. 39, § 3. In c. 39, § 2, it is enacted that a bastard shall be heir of its mother, etc. These statutory provisions would tend to indicate a policy inconsistent with the doctrine of Birtwhistle *v.* Vardill, *supra*. As to the cumulative effect of specific remedial enactments, *cf.* Bourne *v.* Keane, [1919] A. C. 815.

[15] Ross *v.* Ross, *supra;* Van Matre *v.* Sankey, 148 Ill. 536, 36 N. E. 628 (1893); James *v.* James, 35 Wash. 655, 77 Pac. 1082 (1904); Finley *v.* Brown, 122 Tenn. 316, 123 S. W. 359 (1909). *Contra*, Brown *v.* Finley, 157 Ala. 424, 47 So. 577 (1908). The view taken by the Alabama court was held not to violate Art. IV, § 1 of the CONSTITUTION OF THE UNITED STATES, in Hood *v.* McGehee, 237 U. S. 611 (1915).

[16] Keegan *v.* Geraghty, *supra*. If the rights of inheritance of an adopted child are more extensive in the state of the *situs* than in the state of the child's domicil, it will take land according to the more extensive rights given by the law of the *situs*. Calhoun *v.* Bryant, 28 S. D. 266, 133 N. W. 266 (1911). *Contra*, Boaz *v.* Swinney, 79 Kan. 332, 99 Pac. 621 (1909). *Cf.* Estate of Sunderland, 60 Ia. 732, 13 N. W. 655 (1882). The status of adopted child, being unknown to the law of England, seemingly is not recognized there. See DICEY, *op. cit.*, 37, 501.

[17] See MINOR, *op. cit.*, § 101.

[18] *Cf.* Foster *v.* Waterman, 124 Mass. 592 (1878); Woodward's Appeal, 81 Conn. 152, 70 Atl. 453 (1908); Van Matre *v.* Sankey, *supra*. See 22 HARV. L. REV. 372.

[19] In an earlier proceeding between substantially these same parties, the Supreme Court of California affirmed the child's "adopted" status. Estate of McNamara, 181 Cal. 82, 183 Pac. 552 (1919).

as an adopted child, hence the heir of its adopting parent.[20] But adoption properly is an assumption of the relation of parent to the child of another.[21] The "adoption" of one's natural child is legitimation, and within the inhibition of the Statute of Merton. Conceding this, and even assuming the Statute of Merton not to have been repealed in Illinois, the principal case is sound. California has termed the proceeding herein an adoption. The law of Illinois recognizes and permits adoption, and the court's attitude toward adopted children has been consistently liberal.[22] Far from violating public policy, the decision shows an enlightened appreciation of a social problem, now occupying the attention of the legislatures throughout the country.[23] It would be anomalous and unjustifiable, that the same law should deny to this child the property of its natural parent and permit the illegitimate child of another to inherit as an adopted child.[24]

CONTRACTS ILLEGAL UNDER THE CLAYTON ACT. — The Clayton Act, passed "to supplement existing laws against unlawful restraints and monopolies," [1] makes illegal certain contracts if they "may substantially lessen competition or tend to create a monopoly." [2] The law hitherto reached only unreasonable "restraints of trade," [3] applying the test of "the standard of reason which had been applied at common law." [4] It is thus extended by this Act, which seeks to

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[20] See *supra*, note 3.

[21] See Blythe *v.* Ayres, 96 Cal. 532, 559, 31 Pac 915, 916 (1892).

[22] *Cf.* Butterfield *v.* Sawyer, 187 Ill. 598, 58 N. E. 602 (1900); Flannigan *v.* Howard, 200 Ill. 396, 65 N. E. 782 (1902).

[23] See 1921 Mo. LAWS, 118. See p. 96, *infra*.

[24] See 1921 CAHILL'S ILL. REV. STAT., c. 4, § 9

[1] See Act of October 15, 1914, c. 323; 38 STAT. at L. 730; U. S. COMP. STAT. § 8835.

[2] 38 STAT. at L. 731, § 3.

[3] The early common law view, that all restraints were illegal, was soon broadened and the test of the reasonableness of the restraint was applied. See Standard Oil Co. *v.* U. S., 221 U. S. 1, 58 (1911). See also A. M. KALES, CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE, c. 1; 3 WILLISTON, CONTRACTS, § 1633 *et seq.* In the United States doubt as to the law and a growing tendency toward combination resulted in the enactment of the Sherman Anti-Trust Act. See 21 CONGRESSIONAL RECORD 3151–3152. See also Standard Oil Co. *v.* U. S., *supra*, at 50. After adhering literally to the words of the statute for 20 years, the Supreme Court ceased to hold contracts and combinations illegal unless the restraint imposed was unreasonable. See Standard Oil Co. *v.* U. S., *supra*; U. S. *v.* American Tobacco Co., 221 U. S. 106 (1911). See also Robt. L. Raymond, "The Standard Oil and Tobacco Cases," 25 HARV. L. REV. 31; A. M. Kales, "The Sherman Act," 31 HARV. L. REV. 412; Henry J. Steele, "The Sherman Anti-Trust Law," 6 CORN. L. Q. 217, 220. For the view that the distinction between "good" and "bad" trusts is unjustifiable, see Myron W. Watkins, "The Change in Trust Policy," 35 HARV. L. REV. 815, 926.

[4] As to the other possible standards to be applied, see A. M. KALES, *op. cit.*, 106–108. It is to be noted that in applying "the standard of reason which had been applied at common law," the Supreme Court is entitled to declare for itself what the common law may be, preliminary to applying the Sherman Act; hence certain conduct may be held illegal though there may be common law precedents to the contrary. Dr. Miles' Medical Co. *v.* Park & Sons Co., 220 U. S. 373, (1911).